

PETITIONER:
VISHWANATH SHANTHAMALLAPPA DHULE & ANR.

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 12/08/1997

BENCH:
G. T. NANAVALI, S. P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J

This appeal by special leave is directed against the judgment of the Karnataka High Court in Criminal Appeal No. 555 of 1980 whereby it confirmed the conviction of the appellants under Section 302 read with section 34 IPC recorded by the Sessions Judge, Bijapur in Sessions Case No. 29/80.

The prosecution case was that on 3.12.1979, at about 8.30 or 9.00 a.m., while deceased Baburao and his son Sharanappa were proceeding from their house to their field carrying food for their father who was staying in the field and when they were passing through the field of Suleman, the appellants along with three others assaulted Baburao. Appellant No. 2 gave a blow with an axe on the neck of the deceased as a result of which he fell down and soon thereafter died. On seeing this assault on his father Sharanappa, who was then a child of about 5 years, ran away towards the village. P.W.4 Bhimashankar, who was returning from his field to the village, saw this assault on the deceased who was distantly related to him. He raised a cry whereupon the accused ran away. He went near Baburao and found that he was already dead. He started weeping and proceeded further towards the village. On the way he met Irappa (PW5). Irappa asked him why he was weeping P.W.4 told him that accused persons had killed Baburao. On the way he also met one Shivagondappa P.W. 6 and informed him also about the assault on the deceased by the accused. He thereafter went to the house of his uncle Guralingappa P.W.8 and informed him about the incident. He then along with other relatives went back to the place where Baburao was lying dead. P.W. 3 father of the deceased then requested P.W. 8 to go and lodge a complaint with the police. He reached Police Station at Indi situated 30 Km. away from that village and lodged his complaint. After completing the investigation the police charge sheeted all the five accused. The Trial Court convicted appellant Nos. 1 and 2 only for the offence punishable under section 302 read with section 34 IPC. The other accused were acquitted. In convicting the appellants, the Trial Court relied upon the

evidence of P.W.4 Bhimashankar, which received corroboration from the evidence of P.W.5 Irappa and P.W.6 Shivagondappa.

The High Court after reappreciating the evidence found that the evidence of P.W.4 was quite reliable as no infirmity appeared in his evidence. The High Court also found that his evidence was fully corroborated by the evidence of P.W.6. It therefore, confirmed the conviction and dismissed the appeal.

What is contended by the learned counsel for the appellants is that the evidence of P.W.4 ought not to have been relied upon as there was enmity between the deceased and the accused and this witness was the cousin of the deceased. He also submitted that the prosecution has failed to explain how the burn injuries, noticed by the doctor who performed the post mortem, were received by the deceased. There was delay in lodging the First Information Report and starting the investigation. Therefore, the appellants should have been given the benefit of doubt. We find no substance in any of these contentions. Though P.W.4 was the cousin of the deceased it was not even suggested to him in his cross examination that he had any reason to falsely involve the accused. We do not find any material on record on the basis of which it can be said that he had shared the enmity of the deceased with the accused. Significantly, his presence at the scene of offence was not even challenged by the accused. The evidence discloses that immediately after seeing the assault on the deceased he went to the village and informed those who met him on the way about causing of the death of the deceased by the accused. We do not find any infirmity in his evidence. The courts below were, therefore, fully justified in placing reliance upon his evidence. Once his evidence is believed it establishes that appellant No. 2 had given an axe blow on the neck of the deceased. It is no doubt true that no blow was given by appellant No. 1 to the deceased. Possibly that became unnecessary as after receiving the first blow the deceased had fallen down on the ground. Appellant No. 1 with appellant No.2 had gone together and assaulted the deceased. Appellant No. 1 had also raised his axe to assault the deceased. Therefore, his conviction under section 302 read with section 34 IPC cannot be said to be improper. In view of the distance between the place where the offence took place and the police station it cannot be said that there was any delay either in lodging the information or in starting the investigation. As regards the burn marks noticed by Dr. Bagali (P.W.9), who had conducted the post mortem examination and who was declared hostile, no such injuries were noted while inquest panchnama was prepared and no question in that behalf was put to P.W.1 Basanna who had acted as a panch witness. Moreover as deposed by the doctor, they were post mortem injuries. Therefore, that circumstance cannot be considered as sufficient to create any doubt regarding veracity of P.W.4.

The appeal is, therefore, dismissed. Bail bonds are ordered to be cancelled.